panies shall without compensation provide safety appliances at street crossings. *Delaware, etc. R. Co.* v. *East Orange*, 41 N. J. L. 127; *Village of Clara City* v. *Great Northern R. Co.*, 130 Minn. 480, 153 N. W. 879; *Cincinnati, I. & W. R. Co.* v. *City of Connersville*, 218 U. S. 336. See 3 ABBOTT, MUNICIPAL CORPORATIONS, § 854. If at the time in question there is a preëxisting right on the part of the city to require the railway company to maintain the crossing without compensation, an agreement by which the city gives up that right is obviously invalid. *State* v. *Great Northern R. Co.*, 134 Minn. 249, 158 N. W. 972; *Northern Pacific R. Co.* v. *Minnesota*, 208 U. S. 583. But in the principal case the city had no preëxisting right to give up. The railroad owned the land and there was no street over it. Not until the railroad granted to the city the right to open a street over its property did the city acquire any police power over the crossing. *State* v. *Chicago, St. P., M. & O. R. Co.*, 85 Minn. 416, 89 N. W. 1. Since, therefore, the contract with the railway company was not a surrender of the city's police power, the subsequent ordinance in violation thereof was null and void.

NEGLIGENCE — CHARITABLE CORPORATION — LIABILITY OF HOSPITAL TO PAY PATIENT FOR NEGLIGENCE OF ITS SERVANTS. — Plaintiff's intestate was confined in the hospital of defendant, a charitable corporation without capital stock and paying no dividends. Owing to insufficient guarding, he jumped from a window in a delirium and was killed. He paid fifteen dollars a week for his care. *Held*, that defendant was not liable for the negligence of its servants. *Mikota* v. *Sisters of Mercy*, 168 N. W. (Iowa) 219.

Where the injured person was wholly a recipient of the charity, the charitable funds are generally not chargeable with damages for the torts of servants. *Abston* v. *Waldon Academy*, 118 Tenn. 25, 102 S. W. 351. *Contra*, *Donaldson* v. *General Public Hospital*, 30 New Bruns. 279. Where the injured person paid for his care the institution is still immune. *Downes* v. *Harper Hospital*, 101 Mich. 555, 60 N. W. 42; *Thornton* v. *Franklin Square House*, 200 Mass. 465, 86 N. E. 909. *Contra*, *Mersey Docks* v. *Gibbs*, 1 H. L. 93; *Glavin* v. *Rhode Island Hospital*, 12 R. I. 411. But where the plaintiff was not a recipient of the charitable services, liability has often been imposed. *Bruce* v. *Central Methodist Episcopal Church*, 147 Mich. 230, 110 N. W. 951; *Gamble* v. *Vanderbilt University*, 138 Tenn. 616; 200 S. W. 510 (1918). In support of the rule of non-liability it is said that the trust funds must not be diverted to pay such claims. See *Fire Insurance Patrol* v. *Boyd*, 120 Pa. 624, 647, 15 Atl. 553, 557. But see 31 HARV. L. REV. 481. The cases imposing liability in favor of persons not recipients of the charity are inconsistent with this reasoning. Some courts base non-liability on an implied agreement not to hold the institution liable. See *Powers* v. *Mass. Homeopathic Hospital*, 109 Fed. 294, 303. This seems fictitious, especially where the patient pays. The question turns upon the policy behind the rule of *respondeat superior*. It is said that one who employs another to do an act for his benefit should bear the risk of injury therefrom to third persons. See *Hall* v. *Smith*, 2 Bing. 156, 160; *Hearns* v. *Waterbury Hospital*, 66 Conn. 93, 125, 33 Atl. 595, 604. But "benefit" here should mean the furtherance of an enterprise in which one is engaged. A strong additional reason lies in the need of liability in order to secure careful management. See 31 HARV. L. REV. 482. Charitable institutions form no exception.

NEGLIGENCE — PROXIMATE CAUSATION — THE INTERVENTION OF AN ILLEGAL ACT — THE *LUSITANIA*. — The British passenger-carrying merchantman, *Lusitania*, sailed from New York for Liverpool with the knowledge that Germany had declared a submarine blockade of the waters surrounding England and Ireland. While at sea numerous wireless advices were received from the British Admiralty as to the activities and location of submarines,

as to the best course to pursue, and a warning to reach port at dawn. These advices were followed or disregarded by the captain as he saw fit. The ship was sunk without warning by a submarine and in a petition to determine liability, *held*, that the petitioner was not liable as not negligent, or if negligent, such negligence was not the proximate cause of the injury. *The Lusitania*, 251 Fed. 715.

As the existence of the submarine zone was known to all, the passengers could expect no more of the petitioner than that he use due care under the circumstances, the submarine menace being a circumstance. See 31 HARV. L. REV. 306. The disregard of the advices, based on observations and submarine activities, can scarcely be justified on the grounds that the commanding officer of a merchantman be left free to exercise his own judgment. The advices and previous sinkings showed the menace to be at its height off the immediate south coast of Ireland, and the reasonableness of a course around the north of Ireland or one farther south, putting in at a different port, seems to have been overlooked. See *Express Co.* v. *Kountze Bros.*, 8 Wall. (U.S.) 342; *The George Nicholaus*, Fed. Cas., No. 13,578; *The Union Insurance Co.* v. *Dexter*, 52 Fed. 152. In order to reach port at dawn, why slacken speed in the danger zone instead of farther out at sea? Again it is not so clear that the crew was free from negligence, as negligence is not to be measured by poise of temperament, excitability, or the reverse. See *Bessemer Land Co.* v. *Campbell*, 121 Ala. 50, 60. The illegal intervening act, as any other intervening act, would break the chain of causation only if it could not have been anticipated. *Filson* v. *Pacific Express Co.*, 84 Kan. 614, 114 Pac. 863, 29 HARV. L. REV. 453. See J. SMITH, "Legal Cause in Actions of Tort," 25 HARV. L. REV. 103, 121. That the *Lusitania* did not anticipate the sinking is not so clear as the court seems to think. On the two previous voyages, the *Lusitania* hoisted the American flag and their act was justified on the grounds that Germany had announced her intention to sink British merchantmen on sight. It is unfortunate that the decision was not confined more strictly to the facts and a proper application of the law thereto.

REFORMATION OF INSTRUMENTS — REFORMATION FOR MISTAKE OF LAW. — A written contract contained, after the description of the estates and specified properties to be conveyed, the words, "and all other improvements." The parties had previously agreed, orally, that certain sugar mills and machinery should be excepted, but no mention of this was made in the contract. The defendant by his answer, in effect a bill in equity, seeks reformation of the contract. *Held*, that equity will reform for mutual mistake of law where the contract fails to express the intention of the parties. *Philippine Sugar, etc. Co.* v. *Philippine Islands*, 247 U. S. 385.

For a general discussion of the principles involved, see NOTES, page 283.

SALES — CONDITIONAL SALES — RIGHT OF VENDOR *Versus* SUBVENDEE. — Plaintiff sold an automobile to X. The title thereto was to remain in the plaintiff until the note, given for the residue of the purchase price, had been paid. X sold the automobile to the defendant, a *bonâ fide* purchaser without notice. Plaintiff sues the defendant in replevin. *Held*, the plaintiff can recover. *Gamble* v. *Shingler*, 96 S. W. 705 (Ga.).

If a vendor transfers possession of the goods to the vendee, but retains legal title as security, the sale is conditional. *Sumner* v. *Woods*, 67 Ala. 139; WILLISTON, SALES, § 7. The vendee may transfer his beneficial interest to a third person. *Nat'l Cash Register Co.* v. *Wapples*, 52 Wash. 657, 101 Pac. 227. If he assumes to transfer more, it is a conversion, and the vendor, at common law, is not estopped, despite the deceptive situation created by conditional sales, from immediately pursuing his rights against a *bonâ fide* subvendee.